

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-220000.3 **DATE:** February 24, 1986
MATTER OF: Cosmos Engineers, Inc.

DIGEST:

1. GAO will not disturb a determination by a contracting agency of the relative desirability and technical adequacy of proposals absent a clear showing that the determination was arbitrary or unreasonable.
2. Protest that meaningful discussions were not conducted with the protester concerning the inadequacies in its experience is denied. The solicitation called for, and the protester submitted, detailed information in this regard. Therefore, GAO agrees with the agency's apparent determination that the inadequacies in the proposal represented weaknesses in the firm's actual experience that could not be remedied during discussions, rather than inadequacies in the firm's demonstration of its experience in its proposal.

Cosmos Engineers, Inc. protests the award of a contract to Harris Corporation under request for proposals (RFP) No. REDSO-WCA-Liberia 85-R-0669-0134, issued by the Agency for International Development (AID), Regional Economic Development Services Organization, Abidjan, Ivory Coast. The procurement was for broadcasting and electronic equipment and related services for the Liberian Rural Communications Network.^{1/} Cosmos contends that AID

^{1/} The procurement was financed by an AID loan to the government of Liberia. Prior to the enactment of Subtitle D of the Competition in Contracting Act (CICA), 31 U.S.C.A. § 3551 et. seq. (West Supp. 1985), we decided bid protests based on our authority to adjust and settle government accounts and to certify balances in the accounts of accountable officers under 31 U.S.C. § 3526 (1982). Thus, we (ft. nt. 1 cont'd on pg. 2)

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improperly evaluated its proposal and failed to conduct meaningful discussions with the firm.

We deny the protest.

The RFP stated that a technical evaluation committee would evaluate technical proposals according to the following evaluation criteria: understanding of the project requirements and responsiveness to the specifications (25 points); applicable experience in performing similar type contracts (20 points); qualifications of contractor personnel (15 points); compliance with specifications for supplies, equipment and technical materials, and schedules for installation (15 points); total price (25 points). The RFP further indicated that the evaluated technical and price scores would be consolidated to determine overall scores (100 points maximum) and select the most advantageous proposal to the government.

Of five proposals received, four were determined by AID to be in the competitive range. After discussions and two rounds of best and final offers, the technical evaluation committee's final evaluation of proposals resulted in the following rankings:

Harris	93 points
Cosmos	80 points
Swager	71 points
Scientific	67 points

AID thereafter awarded the contract to Harris for a total price of \$2,195,000; Cosmos had proposed a price of \$1,986,656.

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declined to review protests over the award of contracts by foreign governments using AID loan funds because we viewed the funds involved as exclusively those of the foreign government since the loan is an obligation of the foreign government to be repaid with interest. See Niedermeyer-Martin Co., 59 Comp. Gen. 74 (1979), 79-2 CPD ¶ 314. Under CICA, our authority is no longer based upon our "account settlement" authority, but rather is based on whether the complaint concerns a procurement contract for property or services by an executive agency. See 31 U.S.C.A. § 3551(1) (West Supp. 1985). Since this procurement is being conducted by AID, a federal agency, we have jurisdiction to consider the protest. See T.V. Travel, Inc., et al., B-218198.6 et al., Dec. 10, 1985, 65 Comp. Gen. ___, 85-2 CPD ¶ 640; Artisan Builders, B-220804, Jan. 24, 1986, 65 Comp. Gen. ___, 86-1 CPD ___.

In a postaward notification to Cosmos, the contracting officer informed the firm of the award to Harris and stated that the Cosmos proposal was not selected because "[i]t was weak in the area of experienced personnel, with particular regards to broadcast equipment installation." More specifically, the contracting officer stated that with respect to experience, Cosmos' proposal was "Notably missing . . . personnel and company experience in providing and installing broadcast facilities," and that with respect to personnel qualifications, Cosmos' proposal was "Notably missing . . . experience in radio broadcasting, overseas experience, and work with the U.S. Government on similar activities." Cosmos then filed this protest.

The protester disputes the contracting officer's conclusions concerning the weakness of its proposal with respect to the two factors of experience and personnel qualifications. Regarding these two factors, Cosmos maintains that information concerning its experience and personnel qualifications was not "notably missing" from its proposal and that the contracting officer's contrary findings in his postaward notification are clearly erroneous. Cosmos argues, for example, that its proposal demonstrated that it had designed and installed a prototype low frequency antenna for the Federal Emergency Management Administration and a "Trident" telecommunications center, including broadcast transmitters, for the Navy. Cosmos also states that its proposal identified an experienced Liberian subcontractor which would assist Cosmos in the installation of the equipment. In addition, the protester asserts that the resumes of its key personnel, which were included with the proposal, identify extensive and broad experience in telecommunications and broadcasting, both domestic and overseas, including Africa.

Generally, it is not the function of our Office to independently evaluate the technical adequacy of proposals. Westinghouse Electric Corp., 57 Comp. Gen. 328 (1978), 78-1 CPD ¶ 181; Decision Sciences Corp., B-182558, Mar. 24, 1975, 75-1 CPD ¶ 175. The overall determination of the relative desirability and technical adequacy of proposals is primarily a function of the procuring agency, which enjoys a reasonable range of discretion in the evaluation of proposals. Struthers Electronics Corp., B-186002, Sept. 10, 1976, 76-2 CPD ¶ 231. Therefore, we will not disturb such determinations absent a clear showing of unreasonableness, abuse of discretion, or violation of procurement statutes or regulations. Bank Street College of Education, 63 Comp. Gen. 393 (1984), 84-1 CPD ¶ 607.

Concerning the two evaluation factors of experience and personnel qualifications, the scoring of the technical evaluation committee was as follows:

	<u>Harris</u>	<u>Cosmos</u>
Experience (maximum 20 points)	20	9
Personnel qualifications (maximum 15 points)	14	11

The narrative accompanying the technical evaluation committee scoring indicates that, with respect to experience, Harris demonstrated broad experience in broadcasting that was unmatched by any competitor. The committee also noted that Harris had extensive African experience, including experience in Nigeria and Liberia. Concerning personnel qualifications, the committee noted that the structure of Harris' home office management, with its extensive overseas experience, inspired particular confidence.

Regarding the experience reflected in Cosmos' proposal (which included an extensive "capabilities brochure"), the committee found relevant only one antenna project that the firm had performed for the United States Information Agency. Moreover, the committee specifically found that Cosmos had no previous African experience. In this regard, AID states that Cosmos provided no details concerning the assistance to be provided to Cosmos by its Liberian subcontractor, and that, in any event, AID was primarily evaluating the experience of Cosmos as a prime contractor. With respect to personnel qualifications, the committee, in its short narrative, stated generally that Cosmos' proposed personnel lacked experience in radio broadcasting, overseas experience, and past similar work for the government.

We have reviewed the proposal submitted by Cosmos and all AID evaluation documents. For the reasons that follow, we think that Cosmos has failed to show that AID improperly or unreasonably evaluated its proposal.

Our review of the record indicates that Cosmos' proposal in fact did not demonstrate experience in performing similar work in Africa, except that one of its managers (not the firm itself) had experience with the installation of a relay station in Liberia. Our review of Cosmos' proposal also confirms AID's statement that Cosmos

failed to provide any significant detail concerning its proposed Liberian subcontractor.

In its protest, Cosmos solely relies on two prior projects that it performed to support its contention that its proposal was not "notably missing" information concerning relevant experience. As stated previously, these two projects were the design and installation of a prototype low frequency antenna for the Federal Emergency Management Administration and also a "Trident" telecommunications center, including broadcast transmitters, for the Navy. AID apparently found that these projects were not relevant experience, and Cosmos itself has presented no evidence to demonstrate that the experience it gained from these projects directly relates to the specific work required under this RFP. Moreover, the record shows the clear superiority of Harris' proposal in terms of applicable experience so that these two projects alone would not, in our view, significantly narrow the firms' respective standings, even assuming that the projects do reflect relevant experience. Accordingly, we find no merit in Cosmos' protest of the evaluation results with respect to experience.

Regarding personnel qualifications, we first note that the record shows that the overseas experience of Harris' proposed personnel exceeds that of Cosmos' personnel. Further, given the superiority of Harris' proposal under the other evaluation factors, and since Cosmos at most could have received only four additional points under this criterion, there is no basis to conclude that any mis-evaluation under this criterion could have prejudiced Cosmos by depriving the firm of an award to which it was otherwise entitled. See Employment Perspectives, B-218338, June 24, 1985, 85-1 CPD ¶ 715; Lingtec, Inc., B-208777, Aug. 30, 1983, 83-2 CPD ¶ 279. We therefore find no merit to Cosmos' assertion that the qualifications of its proposed personnel were misevaluated to the firm's prejudice.

Finally, Cosmos asserts that AID failed to conduct meaningful discussions with the firm because AID did not specifically point out the inadequacies perceived in Cosmos' experience and personnel qualifications. Cosmos contends that it was incumbent on the agency to advise Cosmos of any weakness or deficiency in its proposal and to afford the firm an opportunity to revise its proposal accordingly.

Generally, oral or written discussions are required to be held with all offerors within a competitive range. Such discussions must be meaningful and, in order for discussions to be meaningful, agencies must point out weaknesses, excesses or deficiencies in proposals unless doing so would result in disclosure of one offeror's approach to another or result in technical leveling when the weakness or deficiency was caused by a lack of diligence or competence. See Joule Engineering Corp.,--Reconsideration, B-217072.2, May 23, 1985, 64 Comp. Gen. ___, 85-1 CPD ¶ 589.

Here, the solicitation expressly requested extensive information concerning a firm's specific and relevant experience on similar projects.^{2/} As stated previously, Cosmos submitted a "capabilities brochure" with its proposal which appears to be a complete statement of its experience. Under these circumstances, we agree with AID's apparent determination that the inadequacies in Cosmos' proposal were weaknesses in the actual experience of the firm that could not be remedied during discussions, instead of inadequacies in Cosmos' demonstration of its experience in its proposal.^{3/} See Cotton & Co., B-210849, Oct. 12, 1983, 83-2 CPD ¶ 451. We therefore find no abuse of discretion by the agency in not conducting more extensive discussions than it did.

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel

^{2/} We need not address Cosmos' contention that meaningful discussions were not conducted concerning the firms' proposed personnel since, as discussed above, any deficiency in this regard clearly was not prejudicial to Cosmos in any event.

^{3/} We also note that Cosmos does not indicate how it could have upgraded its proposal in this area, other than stating generally that it could easily have strengthened and augmented its proposal in this regard.